

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD.

SPECIAL CIVIL APPLICATION No 5441 of 1991

For Approval and Signature :

Hon'ble MR. JUSTICE S.K.KESHOTE

1. Whether Reporters of Local Papers may be allowed to see the Judgment ?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the Judgment ?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

KADI KELAVNI MANDAL
VERSUS
DIST. EDUCATION COMMITTEE

Appearance:

MR SR SHAH for the Petitioner
MR HS MULIYA for Respondent No.1
MS MANISHA LAVKUMAR, AGP, for Respondents No.2,3

CORAM : MR JUSTICE S.K. KESHOTE
Date of Decision : 31/08/2000

C.A.V. JUDGMENT

1. Prayer has been made by the petitioner, a

registered public trust, for direction to the respondent to release and make payment of the amounts of grant made in favour of the petitioner at annexures A, B, C, D, H, I and J. It has further been prayed for direction to the respondents not to withhold or suspend or continue the suspension of release of the grant in any manner whatsoever. Further consequential prayer has also been made.

2. The facts of the case are that the petitioner-trust is running two primary sections in two schools, one known in the name of Shah Gokalben Popatlal Private (Approved) Primary School and therein there are Stds. I, II, III and IV. Another school is in the name of Zhaveri High School (Primary Division), Kadi and there are Stds. V, VI and VII. It is the case of the petitioner that the grant for the years, 1987-88, 1988-89 and 1989-90 have been sanctioned in favour of the petitioner for both the schools but actual payment of the amount has not been made. Hence, this special civil application.

3. It is unfortunate that the respondents No.2 and 3 have not cared to file reply to the special civil application. In the facts of this case, reply of the respondent No.2 in the matter was must. In case reply would have been filed by the respondent No.2 or the respondent No.3, the matter would have been easy for the court to decide. It is true that in absence of reply to the special civil application, the facts stated in the petition are to be taken to be uncontroverted and appropriate order can be made but my experience goes to show that in many of the cases, on the basis of forged documents or by concealing material facts, claims are being made by the litigants in the courts. Recently in one case I noticed that the petitioner therein has come up before this court challenging therein the order of the authority concerned, terminating his services. The facts of the case as pleaded in the petitioner were that the petitioner therein was appointed after selection and he was also permitted to join the services and on the very day, on which he joined the services, his services were terminated. In that case, reply to the special civil application had not been filed, meaning thereby, all the facts stated in the petition stood uncontroverted and the matter had to be allowed but before making any final order, the Court considered it to be expedient to call the District Collector concerned and the District Collector concerned remained present in the Court with the record which revealed really a sorry state of affairs. In that case, the petitioner got the

appointment on the basis of forged list of the candidates from the employment exchange department. On detection of that forged list his appointment had been cancelled and criminal case has also been lodged against the person concerned who forged the list. In that complaint, the petitioner therein was stated to be one of the prosecution's witnesses. That clearly goes to show that for want of reply every case cannot be decided but it is also a matter of which notice can be taken that in substantial number of petitions, replies are not forthcoming from the State of Gujarat or its Officers.

4. The respondent No.1 has filed reply to the special civil application and therein one of the contentions is raised that the petitioner has to approach first to the District Education Officer concerned. It has further been stated that in view of the Government instructions dated 10-11-1987, the grant to the petitioner could not be given.

5. Learned counsel for the petitioner contended that once the grant has been approved the respondent No.2 has no power or authority not to release the same. It has next been contended that the instructions, reliance on which has been placed by the respondent No.1 in reply to the special civil application, are not applicable to the case of the petitioner. These Government instructions which are purely executive and administrative cannot be given effect to from the retrospective date. Schools were registered before 7-7-1987.

6. Learned counsel for the respondent, on the other hand, contended that this resolution is effective from the academic year. The order for registration of the school in favour of the petitioner has been made earlier to 7-7-1987 but the school has to start later in point of time and as such this resolution regulate the grant to the schools.

6. In view of the order which I propose to pass in this special civil application, I do not consider it to be necessary to consider and decide all these contentions raised by the learned counsel for the parties.

8. I find sufficient merits in reply made by the respondent No.1 that in this matter the petitioner first has to approach to the District Education Officer concerned. It is the action of the D.E.O. which is challenged before this Court. Grant has been approved

for the years aforestated but it was not released. If it was not released, the petitioner has to first approach to the District Education Officer to know the reasons for non-release of the grant. If the petitioner is not satisfied with the order of the D.E.O. then in the hierarchy he has ample opportunity to approach to the higher authorities that is to the Director of Primary Education or the Commissioner of Higher Education or the State Government, as the case may be. This tendency of the litigants to directly approach to this Court deserves to be deprecated.

9. In the result, this special civil application is disposed of in terms that for the grievance made by the petitioner in this special civil application it is free to file a detailed representation before the District Education Officer, Mahesana and the District Education Officer concerned is directed to decide the representation of the petitioner within a period of one month from the date of receipt of the same. In case the grievance of the petitioner is not acceptable, a reasoned order may be passed and copy of the same may be sent to the petitioner by registered post A.D.. If the petitioner is not satisfied with the order of the D.E.O., Mahesana, then it has next to approach to the Secretary of the Education Department, New Sachivalaya, Gandhinagar by filing an appeal-cum-representation and the Secretary concerned is directed to, in case that eventuality arises, decide the same within a period of one month from the date of receipt of the same by passing a reasoned order. Where the grievance of the petitioner is not accepted, liberty is granted to it for revival of this special civil application. The special civil application and Rule stand disposed of accordingly with no order as to costs.

zgs/-